

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL A. HENDRICKS,	§	
	§	No. 586, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 9806014577A
Appellee.	§	

Submitted: May 13, 2011

Decided: July 29, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

**O R D E R**

This 29<sup>th</sup> day of July 2011, upon consideration of the briefs on appeal and the Superior Court record, it appears to the Court that:

(1) The appellant, Michael A. Hendricks, filed an appeal from the Superior Court's August 19, 2010 order denying his motion for postconviction relief. We have concluded that there is no merit to the appeal and affirm the judgment of the Superior Court.

(2) In October 2000, a Superior Court jury convicted Hendricks of six drug offenses. Hendricks was sentenced to a lengthy prison sentence. On direct appeal, this Court affirmed the judgments of the Superior Court.<sup>1</sup>

(3) On March 10, 2008, Hendricks filed a motion for postconviction relief pursuant to Superior Court Criminal Rule 61 (“Rule 61”). In pertinent part, Hendricks’ motion alleged that the prosecutor during closing argument made improper comments on the reasonable doubt standard of proof (hereinafter “prosecutorial misconduct claim”) and a related claim of ineffective assistance of counsel.<sup>2</sup> The Superior Court referred the postconviction motion to a Commissioner for a report and recommendation.

(4) In the proceedings before the Commissioner, Hendricks filed a motion for the appointment of counsel, a motion for an evidentiary hearing, and two motions for leave to file further motions to “expand the record” and/or to “amplify” his prosecutorial misconduct claim and related ineffective counsel claim (collectively “postconviction claims”). The record reflects that the Commissioner granted the first motion to expand the

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<sup>1</sup> See *Hendricks v. State*, 871 A.2d 1118 (Del. 2005) (concluding that evidentiary issues raised on appeal are without merit).

<sup>2</sup> Hendricks raised other claims in his postconviction motion, but he has not pursued those claims on appeal. See *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997) (concluding that claims raised in postconviction motion but not briefed on appeal are deemed to be waived and abandoned and will not be considered by this Court).

record/amplify the postconviction claims but denied the second motion as repetitive. The Commissioner also denied the motions for the appointment of counsel and for an evidentiary hearing.

(5) By report dated March 31, 2010, the Commissioner recommended, in pertinent part, that the postconviction motion should be denied on the basis that the ineffective counsel claim was without merit and that the prosecutorial misconduct claim was procedurally barred under Rule 61(i)(3).<sup>3</sup> Thereafter, Hendricks filed objections to the report, arguing that the Commissioner abused her discretion when denying his second motion to expand the record/amplify the postconviction claims. Upon *de novo* review, however, the Superior Court adopted the Commissioner's report and recommendation and denied Hendricks' motion for postconviction relief. This appeal followed.

(6) On appeal, Hendricks argues that his postconviction claims implicate his constitutional rights and, accordingly, warrant consideration under Rule 61(i)(5).<sup>4</sup> We disagree. Having carefully considered the parties' briefs on appeal and the Superior Court record, we conclude that Hendricks'

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<sup>3</sup> See Del. Super. Ct. Crim. R. 61(i)(3) (barring a claim not previously raised absent cause for relief from the procedural fault and prejudice).

<sup>4</sup> See Del. Super. Ct. Crim. R. 61(i)(5) (providing that an otherwise applicable procedural bar shall not apply to a colorable claim that there was a miscarriage of justice because of a constitutional violation).

prosecutorial misconduct claim is without merit and was thus properly barred under Rule 61(i)(3) without exception. A review of the prosecutor's closing argument does not reveal any significant inaccuracy or misstatement about the reasonable doubt standard of proof. Moreover, in the final analysis, because the prosecutorial misconduct claim is without merit, Hendricks cannot support a claim that he was prejudiced as a result of any alleged related ineffectiveness of his counsel.<sup>5</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>5</sup> See *Strickland v. Washington*, 466 U.S. 668, 687-88, 692 (1984) (holding that a defendant claiming ineffective assistance of counsel must show that counsel's representation fell below an objective standard of reasonableness and was prejudicial).